

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.437 OF 2006

Tata Iron & Steel Company Limited ... Petitioner.

V/s.

Shah Vadilal Jethalal Agro Equip
Pvt. Ltd & Ors. ...Respondents.

Shri.S.S. Parab i/b Parab & Associates for the petitioner.
Mr.Yashwpal Thakur i/b Paras Kuhad & Associate for respondent Nos.1 to 3.
Mrs.M.M. Deshmukh APP for the State.

CORAM : V.M. KANADE, J

DATED : 03/08/2006

P.C. :-

1. Heard the learned counsel appearing on behalf of petitioner and the learned counsel appearing on behalf of the respondents.
2. By this petition, petitioner is challenging the order passed by Metropolitan Magistrate, 33rd Court at Ballard Pier, dated 13th July, 2005 whereby the learned Magistrate was pleased to allow the application filed by the accused and directed the complainant to choose any of the three cheques on the basis of which he wanted to proceed against the accused. Against the said order

revision was preferred by the petitioner in the Sessions Court. In criminal revision application the Sessions Court Judge gave further direction that the case may be split up into seven complaints and the trial court should proceed with trial of seven split up complaints.

3. Brief facts which are relevant for deciding this petition are as under.

Complainant filed complaint in the court of 33rd Court, Ballard Pier under Section 138 of N.I. Act against the respondent on account of dishonour of 21 cheques which were issued by accused No.1 and which were signed by accused No.2, which were drawn on Bank of India, Mohammedali Road Branch, Mumbai in discharge of their existing liabilities towards the material sold and supplied to accused No.1 by the complainant. Details of 21 cheques which were issued by accused against various invoices have been set out in the complaint. It is further submitted in para 5 of the complaint that on account of outstanding amount against material sold and supplied by the company to accused No.1, had assumed serious proportions and an amount of Rs.1,07,07,333.95/- was due and payable and various attempts made by the accused to further delay the payments. Ultimately on

31/07/2000 accused No.1 agreed to clear the entire outstanding amount by September, 2000 and offered a schedule of payment and accordingly issued 21 cheques. After the said cheques were presented on 2/11/2000, all the said cheques returned unpaid and were dishonoured by bankers with the remarks "Payment stopped by drawer". Statutory notice was issued and in spite of service of statutory notice, accused did not make the said payment and therefore, criminal complaint was filed. Learned Magistrate issued process and after the process was served, accused appeared before the Magistrate.

4. An application was made by the accused U/s.219 of Cr.P.C. in which it was contended that the complainant had ignored the mandate U/s.219 of Cr.P.C. and that more than three instances had been clubbed together in a single transaction and this was contrary to the provision of Section 219 of Cr.P.C. It was therefore, prayed that the suitable order may be passed directing that the complaint was in clear violation of Section 219 of Cr.P.C. Reply was filed by the complainant in which it was stated that all the 21 cheques were presented to clear on one date i.e. on 2/11/2000 and all the 21 cheques were returned unpaid vide bank memos dated

3/11/2000 which were received by the complainant through its bankers on 6/11/2000. It was specifically denied that the complaint was in violation of Section 219 of Cr.P.C. It was further submitted that one demand notice dated 7/11/2000 incorporating dishonour of 21 cheques was issued and accused were called upon to make payment against 21 dishonour cheques.

5. Ld. Magistrate relied upon the judgment of Madras High Court in the case of "M/s. Printo Stick and another V/s. M.L. Oswal Cri. Revision Case No.320 of 1991 and held that provision of Section 219 of Cr.P.C. clearly applicable to the facts of the case. Learned Magistrate also further observed after going through the documents on record that the complainant had relied on number of receipts as well as cancellation of number of receipts which were issued against the material sold and issued against various bills. He further observed that since cheques were issued for various bills, accused were likely to be prejudiced after common evidence is led by the complainant. Against said judgment and order, petitioner preferred revision application in the Sessions Court. Advocate for the accused relied on the

judgment of Madras High Court and advocate for the complainant relied upon the judgment of Bombay High Court in the case of Rajasthani Trading Co & anr Vs. Chemos International Limited & anr. reported in 2001 ALL MR(Cri.)630. Sessions Court observed that procedural provisions as alleged U/s.219 of Cr.P.C. have to be strictly followed. Surprisingly Sessions Court has not given any reasons and has not taken into consideration submissions which are made by the advocate for complainant and learned advocate for the accused/respondent. He has also not considered judgment of Bombay High Court on which reliance was placed by the complainant. He has also not taken into consideration judgment of Madras High Court on which reliance was placed by the learned counsel for the accused. Sessions Court further modified the order of Magistrate though no request had been made or application had been made by learned counsel for the accused and further directed that the case should be split up in seven complaints and trial of seven split up case should be decided by the learned Magistrate.

6. Learned counsel for the petitioner vehemently

assailed the order passed by the learned Magistrate and learned Sessions Court. He submitted that provision of Section 219 of Cr.P.C. was not attracted in the present case. He submitted that in view of the provisions of Section 220(1) of Cr.P.C. cheques were issued in respect of material sold and supplied over a period of one year. Single complaint was maintainable particularly when these 21 cheques were issued on one date towards the payment of existing liabilities and dues which had accrued over the supply of material by the complainant to the accused over a period of one year. All the cheques were dishonoured on one date by the bankers of accused namely Bank of India, Mohammedali Road Branch, Mumbai. He further submitted that, therefore, findings recorded by the Magistrate that prejudice would be caused to the accused was unwarranted and wrong. He submitted that Sessions Court also did not consider judgment of this court on which reliance was placed by the complainant which was binding on the Sessions court and Sessions Court was duty bound to refer said judgment and to consider ratio laid down in the said case. He invited my attention to Rajasthani Trading Co & anr Vs. Chemos International Limited & anr. (Supra). He

specifically therefore, submitted that the order passed by the lower courts were liable to be set aside as they have committed error of law which is apparent on the face of record.

7. Learned advocate for the respondents on the other hand vehemently opposed submissions made by the learned counsel for the petitioner. He placed reliance on the two judgment, one of Andra Pradesh High Court in the case of "City Automobiles and Anr. Vs. J.K. Industries Limited and Anr. and second one of Madras High Court in the case of "M/s. Printo Stick and another V/s. M.L. Oswal Cri. Revision Case No.320 of 1991. He submitted that prejudice would be caused to the accused as the complaint was filed in respect of dishonour of 21 cheques which were issued against 21 invoices and 21 dishonoured transactions. He submitted that it was not difficult for the accused to led evidence in respect of these separate transactions. He submitted that, therefore, provisions of Section 219 of Cr.P.C. were clearly attracted. He further submitted that the provisions of Section 220(1) were not attracted in the present case as the transaction in question was not a

single transaction but they were 21 different transactions in respect of 21 invoices and therefore each cheque pertains to separate transaction.

8. I have given anxious consideration to the submissions of learned counsel for the petitioner and the learned counsel for the respondents. I have perused the complaint and also impugned order passed by the lower courts. Perusal of complaint discloses that complainant had sold and delivered goods to the accused pertaining to the agreement over period of one year. Though goods were delivered against the various invoices, accused did not make payment towards the said amount which is due and payable. Complainant requested the accused to make the payment towards the goods which were sold and delivered against the various invoices and, therefore, accused agreed to make the payment under payment schedule and issued 21 cheques. These cheques were deposited on the same date and all the cheques were returned with the remarks "Payment stopped by drawer" and the memos which were issued by the bank was also of the same date. On the basis of these averments, present complaint has been filed. It can not be said, therefore,

at this stage that these 21 cheques were issued independently against the delivery of the material which was sold to the accused on different dates and against each invoices. It is alleged by the complainant that 21 cheques were handed over to the complainant towards the payment of aggregate amount which was due and payable. It appears that cheques were issued towards the amount which was due and payable and therefore, in my view, said cheques were issued towards a single transaction.

9. More over these 21 cheques were issued on the same date and were drawn on one bank namely Bank of India, Mohammedali Road Branch, Mumbai and they were dishonoured on the same date. The apprehension as expressed by the accused is clearly unwarranted. It can not be stated that these are 21 separate invoices in respect of 21 different transactions. In my view, no prejudice would be caused to the accused, if he is allowed to cross examine witness of the complainant and therefore, no irregularity would be caused in prosecuting the accused in respect of dishonour of 21 cheques by filing one complaint, more particularly when these 21 cheques were issued on the same date and also

dishonoured on the same date. In my view, provisions of Section 219 are attracted to the facts of present case.

10. Apart from this, Section 220(1) also is applicable to the present case. Section 220(1) reads as under:-

"If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

11. Perusal of aforesaid section clearly shows that the facts disclose that if in one series of acts are so connected together so as to form the same transaction, accused can be tried for one trial. Illustrations (a) to (h) which are given to sub-section (1) also clearly show that in such cases separate charges which are referred in the said illustrations can be tried at the same time. Submissions made by the learned counsel for the petitioner are accepted.

12. I am fortified in my view by the judgment of the learned Single Judge of this court in the case of Rajasthani Trading Co & anr Vs. Chemos International Limited & anr. reported in 2001 ALL MR(Cri.)630. wherein

facts were identical. Learned counsel for the respondent tried to assail said judgment by inviting my attention at para 6 of the judgment and by submitting that facts in the said case were different. I am unable to accept said submissions. In the said case also 27 cheques were issued towards the goods which were sold and delivered to the accused in discharge of their liabilities. 25 cheques are of one date and other two cheques of one date. Learned Single Judge has observed that all the 27 cheques were presented to the bank on one and the same date and they were dishnoured by the bank. The intimation of dishonour of the cheques was given by the bank on the same date. Learned Single Judge also observed that single notice in respect of dishonour of cheques was given to the petitioner and in view of the aforesaid facts, learned Single Judge observed that the provisions of Section 220(1) of Cr.P.C. are clearly attracted. In my view, ratio of the said case is clearly applicable to the facts of the present case. In the case of "City Automobiles and Anr. Vs. J.K. Industries Limited and Anr. of APHC on which reliance is placed by the counsel for the petitioner, the court has observed in para 13 of the said judgment as under:-

"In view of the presumption engrafted under Section 138 of the Act, of course the burden is upon the accused to show that the cheque is issued not in discharge of the debt or other liability. Among the bundle of facts to be proved, the existence of a legally enforceable debt is a sine qua non for maintaining the claim. Having regard to the facts, the complainant in these cases must invariably establish the purchase of tyres, tubes and flaps under each invoice, the existence of debt under it and its enforceability legally. Obviously, the purchase transactions under each invoice is separate having taken place on different dates. There has been no interconnection whatsoever in between one invoice and the other. Therefore, the transaction under each invoice is separate, a fortiori separate cheques having been issued in discharge of the debts under each invoice. It may be that some of the facts like the presentation of the cheques on one date, dishonour of the same on one dates, intimation

of the same by the Bank order a single memo to the complainant, and the complainant issuing a single notice demanding payment under all the dishonoured cheques are common in all these cases. Nonetheless, the purchase transaction under each invoice and issuance of the cheque in discharge of the debt under the said invoice must invariably be proved separately in each case. Therefore all these separate transactions cannot be lumped together which might embarrass the accused in his defence and consequently result in serious prejudice to the accused. Under the circumstances, there is every force in the contention of the complainant that the cause of action could not be one and the same for all the cheques inasmuch as the cause of action does not alone mean the failure on the part of the accused to make the payment covered by the dishonoured cheques within 15 days of the receipt of the requisite legal notice issued by the complainant and it invariably includes all other essential ingredients that need be proved by the complainant to sustain

the claim as set forth supra. It cannot, therefore, be heard to say that a single cause of action has arisen and all the cheques together constitute a single transaction under the facts and circumstances of these case. For the above reasons, I am of the considered view that each transaction under each invoice being separate, issuance of cheque in discharge of the debt under the said invoice constitutes a separate office."

13. From the aforesaid observations, it can be seen that the cheques were issued in respect of separate transactions in respect of separate invoices and in view of the these facts said observations have been made.

14. In the present case goods were sold and delivered to the accused over a period of time and an amount of Rs.1,07,07,333.95/- was due and payable to the petitioner. Accused had issued cheques as per schedule which was given by the accused to the complainant. Facts, therefore, in the present case are different. Therefore, ratio of the said judgment is not applicable.

15. In the result, petition will have to be allowed.

Impugned order passed by the learned Magistrate and passed by the Sessions Court are set aside. Magistrate is directed to decide the complaint as expeditiously as possible and in any case within one year after giving opportunity to the accused to cross examine complainant and his witness.

. Writ petition is, accordingly, disposed of.

V.M. KANADE, J.